Filed 7/12/16 In re N.C. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re N.C., a Person Coming Under the Juvenile Court Law.	
ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. P.C., Defendant and Appellant.	A146274 (Alameda County Super. Ct. No. OJ13021302)

Mother appeals from an order terminating her parental rights. She asserts the juvenile court should have granted the parent-child benefit exception to adoption and asserts inquiry and notice requirements of the Indian Child Welfare Act (ICWA; 25 U.S.C. 1901 et seq.) were not met. We affirm.

BACKGROUND

In September of last year, this court denied mother's writ petition, in which mother sought to reverse the juvenile court's order terminating child reunification services as to N.C. and sought to prevent a permanency planning hearing. (*P.C. v. Superior Court* (Sept. 3, 2015, A145275) [nonpub. opn.].) For convenience, we incorporate our statement of facts from that opinion:

"In July 2013, mother phoned police to complain she could no longer care for her children D.C. (born 2010) and N.C. (born 2013). When her initial call resulted in little action, she called again, threatening to leave her children in a hallway and stating her son D.C. was bleeding. This was at least the seventh time since 2011 mother had asked police to step in and detain her children. Because of the threat, the police obliged. They also arrested mother for child endangerment.

"The Alameda County Social Services Agency filed a dependency petition on behalf of N.C. N.C. was detained and began living with foster parents. A 2011 dependency petition on behalf of D.C. had already been filed; it eventually resulted in dismissal with D.C.'s father taking custody. Only N.C.'s status is at issue on appeal.

"Mother, a single parent who has never married, struggles with mental health issues, namely anxiety and depression. She also suffers from impaired 'cognitive functioning' that compromises her ability to understand the consequences of her actions, an impairment also described in agency reports as 'mild mental retardation.' She is easily overwhelmed by the demands of ordinary life. Psychotropic medications were recommended to her near the outset of the dependency proceeding, but she refused them. Until mother made progress addressing her mental health issues, visits with N.C. would go forward but would remain supervised at a facility called The Gathering Place.

"A year after N.C.'s detention, mother gave birth to a third child, T.C., in August 2014 with a third father. In response to an unsubstantiated report of abuse or neglect of T.C., mother began receiving informal family maintenance services for T.C.

"After the pregnancy, mother cancelled numerous supervised visits with N.C. at The Gathering Place facility in Pleasanton during August and September. Once because she was not feeling well, twice because she did not have diapers for T.C., and twice for a family emergency. She had visits scheduled three days a week, but she decided she no longer wished to travel to The Gathering Place on Wednesdays because it was too hard to make the trip on public transit with her infant. Ultimately, mother wanted visits closer to

her home. She was also upset people in her life were not providing her with the support and respite she needed.

"In October 2014, mother admitted to using, as a babysitter, a woman she recently met who she knew had previous history with Child Protective Services.

"That same month, however, mother finally agreed to take medication: Zoloft and Buspar for her anxiety. There was a noticeable improvement in mother's ability to discuss her situation more calmly.

"In October 2014 and/or November 2014, the child welfare worker offered unsupervised visits, but mother would have to transport N.C. to and from the foster parents in Dublin. Mother complained this would put all the burden on her and not burden the foster parents at all, and emphasized the difficulty of taking BART with her infant. Mother therefore declined the visits.

"As an alternative, supervised visits in mother's home were arranged. These transitioned to observed visits in November 2014. While they went positively, these visits were highly structured and required a great deal of support from multiple service providers. They did not require mother to interact with all of her children at once or require mother to handle transportation issues, or other complexities of real-world parenting.

"Over Thanksgiving 2014, mother called on the maternal grandmother to watch T.C. because daycare was not available. Mother planned on making the same arrangement over Christmas. The maternal grandmother was concerned mother could not parent for more than a few days at a time. Despite mother's reliance on the maternal grandmother, the relationship has been shaky, and mother sometimes cuts off contact.

"In January 2015, the 18-month mark of the dependency proceedings, mother reopened the subject of unsupervised visits. Arrangements were made for mother to pick up N.C. at the Dublin BART station in the morning and return N.C. there in the afternoon. The visits would be once a week on Fridays. The first visit was set for

February 13, 2015, but mother cancelled this visit because one of her sons had a 'WIC appointment.' Mother cancelled the visit on . . . February 20 because she did not have a double stroller for both N.C. and T.C., who would not be in daycare. The following Friday was a special trip for N.C. through The Gathering Place. Thus, visits did not commence until March 6.

"There was an incident on March 27 when mother felt sick and believed she could not get back on BART to return N.C. to the foster parents. Rather than make other arrangements with the foster parents directly, mother called the child welfare worker and demanded the worker solve the problem. The worker told mother the visits were supposed to be unsupervised and mother bore responsibility for resolving the situation. The worker eventually was able to arrange transportation for N.C.

"While mother successfully completed other visits, the visits were becoming stressful for N.C. The visits required N.C. to endure a heavy transportation schedule, often riding in vans with semi-strangers. N.C. was self soothing with food and acting out.

"On April 5, mother had an incident with T.C.'s father. He was hosting T.C. for a visit and was to return T.C. to mother at 5 p.m. at a BART station. Mother was 20 minutes early and demanded T.C.'s father come at once. He replied he would be there at 5 p.m. as scheduled, but mother took off without telling the father. She did not reunite with T.C. until the following evening. Mother had left the BART station because she was late to meet D.C.'s father. Despite her good relationship with D.C.'s father, it never occurred to her to call and explain the situation. Mother said she had no support system that could have helped her in the situation.

"Mother is unemployed and depends on public funds for her income. She has also relied on a charity for half of her monthly rent. She repeatedly told child welfare workers that she was out of money and unable to buy food or diapers for her children. She would request gift cards for food, but even when granted they would be insufficient to make

ends meet. Despite her obvious financial challenges, mother refused money management advice and training offered to her by the agency, including one-on-one grocery shopping assistance. She complained visits with N.C. at her home began 'too soon' because she did not have enough money. As the 18-month status hearing approached, she was likely going to lose her apartment and rent subsidy and had no place to go short of a shelter.

"At the 18-month status hearing, the agency recommended termination of reunification services to mother. Mother and father opposed the recommendation. A day-long trial was set for and began on April 21, 2015. It continued on May 6 and May 14, and concluded May 21.

"The agency's case-in-chief consisted of its reports dated January 7, 2015 and April 21, 2015, whose contents have been discussed above.

"N.C. offered testimony from one of the caregivers, who corroborated N.C. protests or delays when visits with mother approach.

"Mother took the stand on her own behalf. She conceded not taking medication for her mental health issues until October 31, 2014. She conceded not having enough money, at times, to buy food for her children. If N.C. were returned to mother, mother would place both N.C. and T.C. in daycare so she could cope with the daily demands of parenting. She also testified to her belief that certain third-party services related to helping her parent and budget would continue to offer her support if she were to reunify with N.C.

"In rebuttal, the agency's social worker testified. Although mother clearly loved her children and had made progress with her case plan, return of N.C. would put her at substantial risk of detriment. Mother's engagement with services was too late and mother had simply reached the end of the line. There had not been a track record of safe, unsupervised visits. The supervised visits were an unrealistic measure of mother's capacity for parenting, because mother's problem was handling real-world challenges that easily overwhelm her. Meanwhile, mother had appeared to substitute dependence on

police with dependence on child protective service workers. She still could not cope with emergencies and the social worker feared mother was making poor decisions about when to engage or not engage authorities, and about whom she could trust to look after N.C. in times of trouble. The social worker also feared mother lacked the money management skills to keep food in the house.

"In addition to the problems with visitation already discussed, the social worker testified about a missed visit that occurred on May 5, in the midst of the 18-month hearing. Transportation had been arranged to bring N.C. to mother's home, but mother was not there when N.C. arrived. Mother did not reach out to the social worker or foster parents to tell them her other child was sick and that mother had to be at a follow-up doctor's appointment. Mother claimed she left a message for a person at The Gathering Place whom she believed could stop the visit. The social worker, however, testified mother left no message for that person—there had only been a missed phone call. Mother knew the visits and transportation were difficult for N.C. and that timely cancellation was important.

"The juvenile court recognized mother's efforts and her love for her children, but found return of N.C. to mother was not appropriate. Mother still had difficulty parenting over an extended period of time, maintaining a support network, budgeting, and prioritizing resources. She had not taken full advantage of the services offered to her." (*P.C. v. Superior Court*, *supra*, A145275.)

Mother, as mentioned, sought writ relief to stay the permanency planning hearing. We denied that relief, and the hearing proceeded. No witnesses testified; instead, the court heard argument and reviewed an agency report. The agency argued N.C. was adoptable and that the parent-child benefit exception did not apply. N.C.'s attorney agreed. Mother's attorney argued for the exception. The court terminated parental rights and rejected the parent-child benefit exception, finding mother had maintained visitation

but that the strength of her relationship with N.C. did not outweigh the benefits of adoption.

DISCUSSION

Beneficial Parental Relationship

Mother first seeks reversal of the order approving adoption and terminating her parental rights on the ground the juvenile court did not properly consider the close, beneficial relationship she enjoyed with her child. She asserts N.C. would be better off in guardianship or long-term foster care, the other options available to the juvenile court at a Welfare and Institution Code[1] section 366.26 permanency planning hearing. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.)

Section 366.26, subdivision (c)(1)(B)(i), provides an exception to adoption and termination of parental rights when there is a "compelling reason" termination would be "detrimental to the child" because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (See *In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.) The exception applies only in extraordinary cases, and the parent bears the burden of proof. (*In re G.B.*, *supra*, 227 Cal.App.4th pp. 1165–1166.)

To invoke the beneficial parent-child relationship exception, it is not enough to show regular visitation and a good relationship. The question is does " 'the relationship promote[] the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.' [Citation.] The juvenile court 'balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.' [Citation.] 'If severing the natural parent/child relationship would deprive the

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' " (*In re C.B.* (2010) 190 Cal.App.4th 102, 124.)

The juvenile court found mother maintained regular visitation with N.C., but did not find N.C. would sufficiently benefit from a continued relationship with mother, as the benefits of that relationship did not outweigh those of adoption.

Mother asserts the trial court abused its discretion,[2] and points to evidence she believes shows termination would be detrimental to N.C. This evidence, however, is paltry and has little to do with likely harm to N.C. from adoption; rather, it is a compilation of statements the county agency or service providers made at various times during the dependency proceeding that vaguely compliment mother's "bond" with N.C. or mother's ability to parent in a structured environment. Not only does this evidence not disclose a "compelling reason" that termination of rights and adoption would be harmful (cf. *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [service providers stated termination would cause harm]), it does not sufficiently address the benefits to N.C. from a continued parent-child relationship. Mother, for instance, pointed to no evidence demonstrating she was ready to parent N.C. in an unstructured, real-world environment or had overcome the difficulties in parenting that brought her children into the dependency system. In fact, substantial evidence was to the contrary. (See *In re G.B.*,

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[2] "As mother recognizes, some courts have applied different standards of review. (*In re K.P.* [(2012)] 203 Cal.App.4th [614], 621–622 [question of whether beneficial parental relationship exists is reviewed for substantial evidence, whereas question of whether relationship provides compelling reason for applying exception is reviewed for abuse of discretion]; *In re C.B.* [, *supra*,] 190 Cal.App.4th [at pp.] 122–123 . . . [abuse of discretion standard governs review, but 'pure' factual findings reviewed for substantial evidence]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 . . . [applying abuse of discretion standard].) On the record before us, we would affirm under either of these standards. (E.g., *Jasmine D.*, at p. 1351 [practical differences between substantial evidence and abuse of discretion standards are minor].)" (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1166, fn. 7.)

supra, 227 Cal.App.4th at p. 1166 ["Mother's visits with her children were always supervised, mother was only at the beginning stages of working on the effects of domestic violence in her life, and there was still instability and dysfunction surrounding her relationship with father. By contrast, the children were in a secure placement and were bonded with their current and prospective caregivers."].) We cannot say the trial court reached an unreasonable result in denying the parent-child exception and terminating mother's rights. (See *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315 [noting the discretionary nature of decision that a parent-child relationship is "compelling" enough to outweigh the benefits of a adoptive placement].)

ICWA

Mother also seeks reversal of the order terminating her parental rights because, according to mother, the juvenile court did not sufficiently inquire into father's possible Indian background or ensure notice to N.C.'s possible tribe, violating ICWA.

Mother filed a notification of her Indian status in August 2013, stating she had no Indian ancestry, to her knowledge. In an October 2013 addendum to a disposition hearing report, Alameda County Social Services confirmed mother was not asserting Indian ancestry. Father, however, had recently told the county "he may have Native American Ancestry on his paternal grandmother's side of the family" and would "speak with his family and provide any information to the Agency." At the disposition hearing, the court concluded ICWA did not apply at that time.

" 'The determination of a child's Indian status is up to the tribe; therefore, the juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement.' [Citation.] Section 224.3, subdivision (a) places an 'affirmative and continuing duty' on the court and county welfare department in a dependency proceeding to 'inquire whether a child . . . is or may be an Indian child . . . .' Thus, if the court or social worker knows or has reason to know that an Indian child is involved, 'the social worker . . . is required to make further inquiry regarding the possible Indian status of the

child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members . . . and contacting the tribes and any other person that reasonably can be expected to have information regarding the child's membership status or eligibility.' (§ 224.3, subd. (c).)" (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1466 (*Hunter W.*).)

Yet a vague, attenuated, or speculative assertion of possible tribal ancestry does not necessarily trigger ICWA's protections. (*Hunter W., supra*, 200 Cal.App.4th at p. 1468 [no duty to inquire further when mother said she "may have Indian ancestry through her father," but could not identify a tribe or a relative who was a tribe member, and could not identify other who knew more]; *In re J.D.* (2010) 189 Cal.App.4th 118, 123, 125 (*J.D.*) [no duty when paternal grandmother said she was told by her own grandmother she had Indian ancestry, but could not say the tribe and had no living relatives to provide additional information]; *In re O.K.* (2003) 106 Cal.App.4th 152, 157 (*O.K.*) [no reason to believe minor an Indian child when paternal grandmother says father " 'may have Indian in him' " without basing this on any known Indian ancestors].)

Mother cites *In re Damian C.* (2009) 178 Cal.App.4th 192 (*Damian C.*) as a counterpoint to the cases just mentioned. There, a mother's notification of Indian status stated: " 'Pasqua Yaqui—enrollment is currently closed' " and that the maternal grandfather was " 'descended from tribe.' " (*Id.* at p. 195.) When interviewed, that grandfather said he was not involved in tribal activities. He had heard conflicting accounts about whether his own father, the minor's great grandfather who was still living but out of contact, was Yaqui or Navajo. (*Ibid.*) The appellate court concluded the agency had reason to know the minor may be an Indian child and triggered further inquiry and notice to Yaqui and Navajo tribes. (*Id.* at p. 199.)

Here, father thought he might have Indian ancestry not from his own parents or grandparents, but on his "paternal grandmother's side of his family," yet father did not identify a tribe, a tribe member in his family tree, or a living relative to contact. Father

never provided any additional information. Unlike in *Damian C.*, there was no tribe or tribe member to investigate. Although we acknowledge the fact pattern in *Damian C.* is not distant from those in *Hunter W.*, *J.D.*, and *O.K.*, these latter three cases are more akin to our case and, together, all deal with more speculative scenarios than in *Damian C.* Given father's information was so speculative, the court was not obligated to apply ICWA.

DISPOSITION

The order of the juvenile court is affirmed.

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Banke, J.

We concur:

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Humes, P. J.

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Margulies, J.